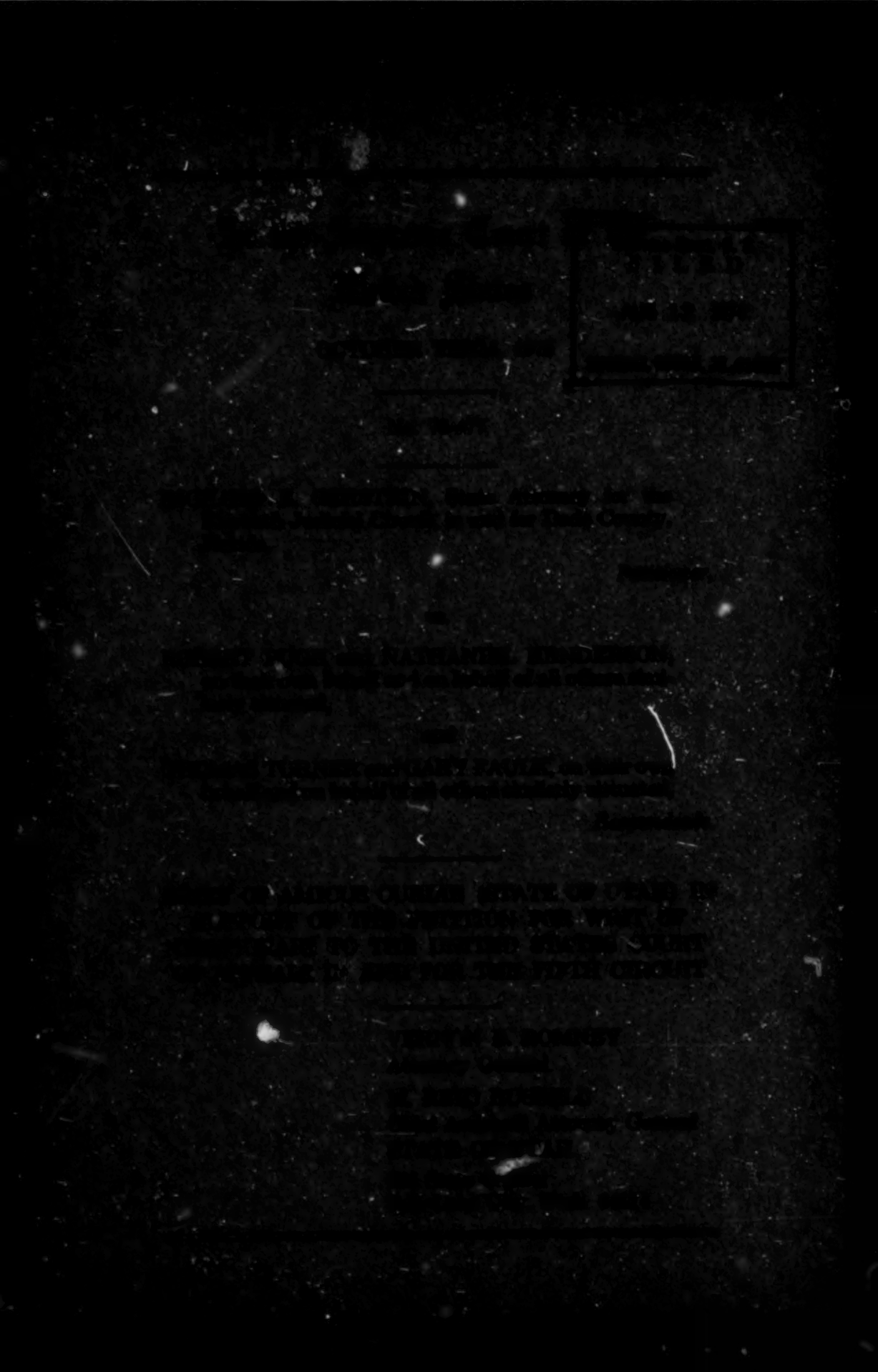

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# In the Supreme Court of the United States

OCTOBER TERM, 1973

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No. 73-477

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RICHARD E. GERSTEIN, State Attorney for the Eleventh Judicial Circuit, in and for Dade County, Florida,

*Petitioner,*

vs.

ROBERT PUGH and NATHANIEL HENDERSON, on their own behalf and on behalf of all others similarly situated,

and

THOMAS TURNER and GARY FAULK, on their own behalf and on behalf of all others similarly sittuated,

*Respondents.*

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## BRIEF OF AMICUS CURIAE (STATE OF UTAH) IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS IN AND FOR THE FIFTH CIRCUIT

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### PRELIMINARY STATEMENT

The State of Utah respectfully submits this Brief Amicus Curiae through its Attorney General, Vernon B.

Romney, thereby supporting Petitioner's Petition for Writ of Certiorari.

This Brief adopts the entire argument laid forth by petitioner heretofore filed in this Court, and further submits that the cause should be reversed because of the important relationships and rights of the state court system which have been abridged.

## ARGUMENT

### A UNITED STATES DISTRICT COURT JUDGE HAS NO JURISDICTION TO INTERFERE BY DECLARATORY AND INJUNCTIVE ACTION WITH DULY CONSTITUTED STATE CRIMINAL PROCEEDINGS ON THE QUESTION OF PRELIMINARY HEARINGS.

The conflict between State and Federal courts as pertaining to injunctions has been an age old battle which should have been well settled by earlier decisions of the United States Supreme Court that have limited the power of District Courts in granting injunctions which interfere with state proceedings. Such holdings have often, however, as in the present case, been ignored by the lower Federal Courts in grasping for standards they feel should apply.

The United States Congress emphasized the separation of Federal and State Systems by enacting what has become known as the "anti-injunction statute." This is found in 28 U. S. C. § 2283 and states:

> "A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."



Therefore, not only is there a presumption against federal interference but clearly, the language of the statute indicates the express desire that only through granted exception can injunctive relief be granted.

This position has been upheld by the United States Supreme Court in *Atlantic Coastline R. R.* v. *Brotherhood of Locomotive Engineers*, 398 U. S. 281, 90 S. Ct. 1739, 26 L. Ed. 2d 234 (1970), where the Court said the following:

> "[A]ny injunction against state court proceedings otherwise proper under general equitable principles must be based on one of the specific statutory exceptions to 2283 if it is to be upheld. Moreover since the statutory prohibition against such injunctions in part rests on the fundamental constitutional independence of the States and their Courts, the exceptions should not be enlarged by loose statutory construction."

The present case finds the lower court attempting to do that which the Court deplored above. The simple belief that the lack of preliminary hearings "could" be disadvantageous if certain circumstances arise surely does not meet any of the exceptions alluded to.

As early as *Stefanelli* v. *Minard*, 342 U. S. 117, 72 S. Ct. 118, 96 L. Ed. 138 (1951), this Court held that Federal Courts should not intervene in state criminal proceedings on the grounds that those proceedings violate procedural due process. Indeed, this position has never been abandoned. It has been expanded and molded through such decisions

as *Dombrowski* v. *Pfister*, 380 U. S. 479, 85 S. Ct. 1116, 14 L. Ed. 2d 22 (1965), that limited federal intervention to injunctions of constitutionally violative statutes, and *City of Greenwood* v. *Peacock*, 384 U. S. 808, 86 S. Ct. 1800, 16 L. Ed. 2d 944 (1966), where the Court refused to uphold an injunction based on the argument that the defendants could not get a fair trial in the state courts.

Recently, this Court reiterated and restored to this controversy a well set out guideline as to the issuance of injunctions. The case of *Younger* v. *Harris*, 401 U. S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971), defined the proper relationship between federal district courts and pending state court criminal proceedings, holding that an injunction or declaratory judgment will issue in a pending situation only under extraordinary circumstances that must include bad faith law enforcement. This is harmonious with the established custom of the federal courts to respect and confide in the competence of state courts. Tbis Court did not limit *Younger*, *id.*, to bad faith law enforcement, but to harassment, or any other unusual circumstance that would call for equitable relief. Such must be shown to the judge sitting in the case.

In defining even further this relationship, the Court said in *Younger*, *id.*, that the federal system must be one:

> ". . . in which there is sensitivity to the legitimate interests of both state and National Governments, and in which National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States."



It is the position of the State of Utah that the reversal of the Court of Appeals is absolutely essential in adhering to the standards this Court has established in *Younger*, *id.*, and in earlier cases. For, in analyzing the facts of the pending appeal, it is most certainly evident that no convincing showing was made that irreparable injury would occur by normal implementation of the state court process.

This Court has never held that every injury beyond that associated with the defense of a single prosecution constitutes an irreparable injury. It has indicated in *Younger*, id., however, that injury that is incidental to every criminal prosecution is not irreparable. *Fenner* v. *Boykin*, 271 U. S. 240 (1926), as well as other cases indicate that a cardinal element of irreparable harm is the requirement common to all equity proceedings and that the plaintiff have no adequate legal remedy.

Though normal state criminal proceedings might not including a preliminary hearing, an individual is still capable of raising not only constitutional issues, but in challenging any procedure imposed on him at or before trial. Simply because he raises the issues of preliminary hearing, and the state does not have such a hearing, does not mean that the individual is entitled to obtain an injunction from the federal judiciary. Rather, recent decisions of this Court alluded to below indicate he does not have such a right.

In two recent decisions, this Court has upheld the holding previously cited from *Younger*, *supra*. Specifically, in *Oshea* v. *Littleton*, ..... U. S. ....., 94 S. Ct. 669 (1974), the Court said:

> "Respondents have failed, moreover, to estab-

lish the basic requisites of the issuance of equitable relief in these circumstances — the likelihood of substantial and immediate irreparable injury, and the inadequacy of remedies at law. We have already canvassed the necessarily conjectural nature of the threatened injury to which respondents are allegedly subjected. And if any of the respondents are ever prosecuted and face trial, or if they are illegally sentenced, there are available state and federal procedures which would provide relief from the wrongful conduct alleged. In appropriate circumstances, moreover, federal habeas relief would undoubtedly be available."

Such remedies are available in Florida although it is readily admitted that the factual differences of the two cases are substantial. What is to be pointed out is simply that the elements of irreparable and immediate injury must be proven and if not proven there must be clear evidence that no remedies exist at law. This the defendants have failed to establish.

Finally, *Steffel* v. *Thompson*, ..... U. S. ....., 94 S. Ct. 1209 (1974), is supportive of *Younger*, *id.*, the Court therein making the following remarks relating to the issuance of an injunction against state proceedings:

> "But, except for statutes that are 'flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph . . .' Younger v. Harris, *supra*, 401 U. S., at 53, 91 S. Ct., at 755, the rationale of those cases has no such basis. Their direction that federal courts not interfere with state prosecutions does not vary depending on the closeness of the constitutional issue or on the degree of confidence which the federal court possesses in the correctness of its conclusions



> on the constitutional point. Those decisions instead depend upon considerations relevant to the harmonious operation of separate federal and state court systems, with a special regard for the state's interest in enforcing its own criminal laws, considerations which are as relevant in guiding the action of a federal court which has previously issued a declaratory judgment as they are in guiding the action of one which has not."

The Tenth Amendment to the Constitution specifically allows the States to handle those matters which concern its procedure, for:

> "The powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Certainly the right to govern and control one's criminal processes — especially where there is no indication of harm or a denial of rights — belongs to the state courts and the laws they interpret. To hold otherwise would be a flagrant abridgement of this Supreme law of the land.

It is therefore submitted to this Court that the Court of Appeals erred in allowing the issuance of the injunction to stand. Such usurpation of authority has never been intended by this Court "unless" there is irreparable injury which has not been established in this case.

## CONCLUSION

It is because of this long-standing precedence cited above that the State of Utah as *Amicus Curiae* in this action propounds to this Court that the federal judiciary

should not be permitted to interfere with proper state court criminal proceedings. Indeed, it is imperative that the states be permitted to carry on unfettered their respective law enforcement efforts and prosecutions. Such separations of powers was clearly intended by the Tenth Amendment to the United States Constitution, quoted above.

It is therefore submitted that the Court of Appeals should be reversed, which action requires first the granting by this Court of the State of Florida's petition for writ of certiorari.

Respectfully submitted,

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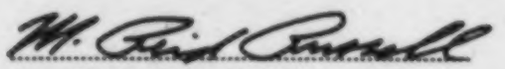
## CERTIFICATE OF SERVICE

I, M. Reid Russell, Chief Assistant Attorney General for the State of Utah, Counsel for *Amicus Curiae*, hereby certify that on the 8th day of August, 1973, I served copies of the Brief of *Amicus Curiae* on Bruce Rogow, Esquire, 733 City National Bank Building, Miami, Florida, and Phillip A. Hubbart, Esquire, Counsel for Respondents; and Peter L. Nimkoff, Esquire, Suite 607 Ainsley Building, 14 N. E. First Avenue, Miami, Florida, and Lewis Jepeway, Jr., Esquire, 101 E. Flagler Street, Miami, Florida, by a duly addressed envelope with postage prepaid.



M. REID RUSSELL
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